

Dec 16, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CLINTON HECK,

Plaintiff,

v.

JAMES KEY, JAMES FUNNEMARK,  
and JANET NELSON,  
Defendants.

No. 2:19-cv-05033-SAB

**ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT; GRANTING  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

Before the Court are Plaintiff's Motions for Summary Judgment, ECF No. 23, and Defendants' Cross-Motion for Summary Judgment, ECF No. 27. The motions were heard without oral argument. Plaintiff is proceeding *pro se*.

Defendants are represented by Assistant Attorney General Timothy J. Feulner.

Plaintiff Clinton Heck, a prisoner in the custody of the Washington State Department of Corrections, is bringing a claim under 42 U.S.C. § 1983, seeking injunctive relief and monetary damages because of alleged denial of the right to petition the government for redress of grievances.

**Motion Standard**

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a

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1 matter of law.” Fed. R. Civ. P. 56(a). The moving party has the initial burden of  
2 showing the absence of a genuine issue of fact for trial. *Celotex Corp. v. Catrett*,  
3 477 U.S. 317, 325 (1986). An issue of material fact is genuine if there is sufficient  
4 evidence of a reasonable jury to return a verdict for the non-moving party. *Thomas*  
5 *v. Ponder*, 611 F.3d 1144, 1150 (9th Cir. 2010). The non-moving party cannot rely  
6 on conclusory allegations alone to create an issue of material fact. *Hansen v.*  
7 *United States*, 7 F.3d 137, 138 (9th Cir. 1993). If the moving party meets its initial  
8 burden, the non-moving party must then go beyond the pleadings and “set forth  
9 specific facts showing that there is a genuine issue for trial.” *Anderson v. Liberty*  
10 *Lobby, Inc.*, 477 U.S. 242, 248 (1986). The parties must support assertions by  
11 citing to particular parts of the record or show that the materials cited do not  
12 establish the absence or presence of a genuine dispute of material fact. Fed. R. Civ.  
13 P. 56(c). However, a court may neither weigh the evidence nor assess credibility;  
14 instead, “the evidence of the non-movant is to be believed, and all justifiable  
15 inferences are to be drawn in his favor.” *Anderson*, 477 U.S. at 255; *see also*  
16 *Cortez v. Skol*, 776 F.3d 1046, 1050 (9th Cir. 2015).

17 In addition to showing there are no questions of material fact, the moving  
18 party must also show it is entitled to judgment as a matter of law. *Smith v. Univ. of*  
19 *Wash. Law Sch.*, 233 F.3d 1188, 1193 (9th Cir. 2000). The moving party is entitled  
20 to judgment as a matter of law when the non-moving party fails to make a  
21 sufficient showing on an essential element of a claim on which the non-moving  
22 party has the burden of proof. *Celotex*, 477 U.S. at 323.

23 When considering a motion for summary judgment, a court may neither  
24 weigh the evidence nor assess credibility; instead, “the evidence of the non-movant  
25 is to be believed, and all justifiable inferences are to be drawn in his favor.”  
26 *Anderson*, 477 U.S. at 255. When parties file simultaneous cross-motions for  
27 summary judgment, the court reviews each motion and the appropriate evidentiary  
28 material identified in support of the motion separately, giving the nonmoving party

1 for each motion the benefit of all reasonable inferences. *Brunozzi v. Cable*  
2 *Commc'ns, Inc.*, 851 F.3d 990, 995 (9th Cir. 2017).

### 3 **Plaintiff's Claim**

4 Plaintiff alleges that he was denied the opportunity to file a PRP in order to  
5 challenge the loss of earned release time that was taken during his placement in the  
6 Stafford Creek Corrections Center (SCCC) Intensive Management Unit (IMU).  
7 Plaintiff asserts that he lost 10 days during December 2017 and January 2018.  
8 Plaintiff maintains he was up against the one-year deadline to file a PRP and  
9 because of Defendants' actions he was unable to meet the deadline.

### 10 **Access to Courts**

11 Under the First and Fourteenth Amendments to the Constitution, state  
12 prisoners have a right of access to the courts. *Lewis v. Casey*, 518 U.S. 343, 346  
13 (1996). "[A]ccess to the courts means the opportunity to prepare, serve and file  
14 whatever pleadings or other documents are necessary or appropriate in order to  
15 commence or prosecute court proceedings affecting one's personal liberty." *Id.* at  
16 384 (quotation omitted). This right "requires prison authorities to assist inmates in  
17 the preparation and filing of meaningful legal papers by providing prisoners with  
18 adequate law libraries or adequate assistance from persons trained in the law."  
19 *Bounds v. Smith*, 430 U.S. 817, 828 (1977).

20 The right of access is not unlimited. Rather, it is limited to complaints in  
21 direct criminal appeals, habeas petitions, and civil rights actions. *Lewis*, 518 U.S.  
22 at 354. Moreover, the right of access to courts "is ancillary to the underlying claim,  
23 without which a plaintiff cannot have suffered injury by being shut out of court."  
24 *Christopher v. Harbury*, 536 U.S. 403, 415 (2002).

25 In a backward-looking claim, where, as here, the prisoner is arguing loss of a  
26 meritorious suit that cannot now be tried, the plaintiff must show: 1) the loss of a  
27 nonfrivolous or arguable underlying claim; 2) official acts frustrating the litigation;  
28 and 3) a remedy that may be awarded as recompense but that is not otherwise

1 available in a future suit. *Phillips v. Hust*, 477 F.3d 1070, 1076 (9th Cir. 2007),  
2 *overruled on other grounds by Hurst v. Phillips*, 555 U.S. 1150 (2009).

3 To have standing to bring such a claim, plaintiff must allege he suffered an  
4 actual injury. *Lewis*, 518 U.S. at 351-52; *Vandelft v. Moses*, 31 F.3d 794, 798 (9th  
5 Cir. 1994). “‘Actual injury’ is defined as a ‘specific instance in which an inmate  
6 was actually denied access to the courts.’” *Vndelft*, 31 F.3d at 798.

### 7 **Facts**

8 On February 28, 2018, Plaintiff, a prisoner in the custody of the Washington  
9 State Department of Corrections (DOC), was transferred to the Airway Heights  
10 Corrections Center (AHCC), a DOC facility in Airway Heights, Washington. He  
11 was classified as medium custody. While at the AHCC from February 28, 2018  
12 until January 15, 2019, Plaintiff was found guilty of four infractions: (1)  
13 introducing or transferring any unauthorized drug or drug paraphernalia; (2)  
14 possessing or receiving a positive test for use of an unauthorized drug, alcohol, or  
15 intoxicating substance, (3) refusing a cell or housing assignment; and (4) being in  
16 an area where the presence of the offender is unauthorized.

17 On April 6, 2018, Plaintiff was placed in the Special Management Unit  
18 (SMU), a short-term segregation unit, pending an investigation into allegations that  
19 Plaintiff was introducing contraband into the prison through a visitor. AHCC staff  
20 confiscated methamphetamine that the visitor had in her possession and the visitor  
21 admitted that she had conspired with Plaintiff to introduce methamphetamine into  
22 the facility. Plaintiff was infracted and found guilty on April 17, 2018. He was  
23 released back into the general population on that day.

24 On August 27, 2018, Plaintiff was placed in the SMU pending investigation  
25 and was released back to general population on August 31, 2018.

26 On October 11, 2018, Plaintiff was terminated from the Therapeutic  
27 Community Long-Term Treatment program. Plaintiff was told that he was going to  
28 be transferred to the Washington Corrections Center (WCC) in Shelton,

1 Washington. Plaintiff stated that he could not be housed at WCC. After staff  
2 verified that he had no reason that he could not be housed at WCC, he was placed  
3 in the SMU pending an investigation and infracted. He was found guilty of this  
4 infraction and on November 16, 2018 was released to general population after his  
5 Custody Facility Plan was approved.

6 On December 12, 2018, Plaintiff was placed in the SMU for investigation  
7 into him refusing a bed assignment. He was housed in the SMU from December  
8 12, 2018 until January 15, 2019.

9 On December 14, 2018, Plaintiff requested legal books, legal materials and  
10 other resources to file a Personal Restraint Petition (PRP) in order to challenge the  
11 loss of 10 days of earned release time. Defendant James Funnemark denied the  
12 request because Plaintiff had not been in SMU for 30 days, pursuant to DOC  
13 Policy 590.500.<sup>1</sup>

14 On December 18, 2018, Plaintiff again requested access to the law library,  
15 legal books, PRP forms and legal materials. Defendant Funnemark denied his  
16 request.

17 On December 21, 2018 Plaintiff spoke with Defendant Funnemark and  
18 explained to him that Plaintiff was facing a deadline to file his PRP. He asked for

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19 <sup>1</sup> Under SMU and AHCC policy, inmates who are housed on the SMU have more  
20 limited access to legal materials. ECF No. 31. If an inmate has a verifiable court  
21 deadline, the inmate can access his personal legal documents/papers from the Law  
22 Library. *Id.* If the inmate does not have a verifiable deadline and has not been in  
23 the SMU for at least 10 days, they do not have access to their legal property. *Id.*  
24 After 10 days, the inmate can obtain copies of their personal legal materials and  
25 also send kites to the Law Librarian for answers to general questions. *Id.* After 30  
26 days, the inmate can have access to limited legal books materials, and various  
27 paperwork/forms from the Law Library. *Id.*  
28

1 priority access. Defendant Funnemark again denied his request.

2 On December 26, 2018, Defendant Funnemark received two kites from  
3 Plaintiff in which he asked for the Black's Law Dictionary and the Brief Bank  
4 Index. Defendant Funnemark denied Plaintiff's request.

5 On December 27, 2018, Plaintiff filed a kite in which he stated that he had a  
6 deadline in a specific case. Defendant Janet Nelson concluded that he had no  
7 mandated deadlines.

8 On January 8, 2019, Plaintiff requested copies and a large manilla envelope  
9 to mail out his personal legal documents to the court and his request was denied.

10 Prior to his time in the SMU in December 2018, Plaintiff filed two PRPs in  
11 November 2018. He had asked for PRP packets and had received them. During his  
12 placement in the SMU in December 2018, Plaintiff filed a PRP with the  
13 Washington courts. The PRPs were signed by Plaintiff while he was housed in the  
14 SMU. During his time at AHCC in 2018 and 2019, Plaintiff accessed the Law  
15 Library five times while he was housed in the general population. Plaintiff never  
16 filed a PRP raising the claims regarding the lost of his 10 days of good time.

### 17 Analysis

18 Here, a reasonable jury would not conclude that Plaintiff suffered an actual  
19 injury to prove his access to court claim. The record demonstrates that Plaintiff had  
20 adequate opportunities to file the PRP prior to his placement in the SMU on  
21 December 12, 2018. Also, the record indicates that Plaintiff was able to file  
22 another PRP while in the SMU in December 2018. Finally, there is nothing in the  
23 record that suggests that Plaintiff ever attempted to file a PRP on the issue that he  
24 claims he wanted to raise. As such, summary judgment in favor of Defendants is  
25 appropriate because no reasonable jury would find in favor of Plaintiff.

26 Accordingly, **IT IS HEREBY ORDERED:**

27 1. Plaintiff's Motion for Summary Judgment, ECF No. 23, is **DENIED**.  
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1 2. Defendants' Motion for Summary Judgment, ECF No. 27, is

2 **GRANTED.**

3 3. The District Court Executive is directed to enter judgment in favor of  
4 Defendants and against Plaintiff.

5 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
6 Order, forward a copy to Plaintiff and counsel and close the file. The Court finds  
7 that an appeal of this Order would not be taken in good faith.

8 **DATED** this 16th day of December 2019.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

14 Stanley A. Bastian  
15 United States District Judge  
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